Op. Ltr. 90-31 Public Access to Dog License Information Maintained by the Hawaiian Humane Society, Inc.

OIP Op. Ltr. No. 05-03 partially overrules this opinion to the extent that it states or implies that the UIPA's privacy exception in section 92F-13(1), HRS, either prohibits public disclosure or mandates confidentiality.

October 25, 1990

Ms. Pamela Burns
Executive Director
Hawaiian Humane Society, Inc.
2700 Waialae Avenue
Honolulu, Hawaii 96826

Dear Ms. Burns:

Re: Public Access to Dog License Information Maintained by the Hawaiian Humane Society, Inc.

This is in reply to your letter dated April 9, 1990, requesting an advisory opinion concerning the above-referenced matter.

ISSUES PRESENTED

I. Whether, under the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes ("UIPA"), the Hawaiian Humane Society, Inc. ("HHS") is an "agency."

II. Assuming that the HHS is an "agency" under the UIPA, whether the City and County of Honolulu's ("City") Application for Animal Registration form, maintained by the HHS, is subject to public inspection under the UIPA.

BRIEF ANSWERS

I. Recognizing that a determination whether an entity is an "agency" subject to the UIPA must be made on a case-by-case basis given the myriad of organizational arrangements for getting the business of the government done, we conclude that for the activities within the scope of its agreement with the City, and its enforcement of State and county laws enacted for the health, safety, and welfare of the public, the HHS is an agency subject to the UIPA. Under the UIPA, an "agency" includes

"corporation[s] or other establishment[s] owned, operated or managed by, or on behalf of this State or any county." Haw. Rev. Stat. § 92F-3 (Supp. 1989).

While an entity is not an "agency" merely by contracting with the State or any county, examining the totality of circumstances surrounding the HHS' relationship to the City, we conclude that the HHS is a corporation operated on behalf of the City within the meaning of section 92F-3, Hawaii Revised Statutes.

The HHS performs a traditionally governmental function, insofar as it has been delegated the power to enforce laws enacted by the State and the county for the health, safety, and welfare of the public. It is authorized to issue summonses and citations for the violation of these laws. In addition, the HHS operations are subsidized primarily through public funds and its receipt of such monies is conditioned upon it following a budgetary process similar to that followed by City executive branch departments. Further, the HHS maintains the City's dog license records, and its records, personnel, and property are subject to City inspection at any time and without prior notice. Lastly, all fees and charges it receives in the course of its operation of a dog pound are remitted to the City.

II. We conclude that except for the home address and home telephone number of individuals granted a dog license by the City, information contained upon the City's Application for Animal Registration must be made available for public inspection and copying under the UIPA.

FACTS

Section 143-2, Hawaii Revised Statutes, makes it unlawful for any person to own or harbor an unlicensed dog, unless the several counties by ordinance dispense with, or modify, the licensing requirement. Under chapter 143, Hawaii Revised Statutes, upon the receipt of a license fee, the director of finance of each county issues to the person paying the fee a license, which states the name and address of the person to whom the license is issued; the year for which the license is paid; the date of payment; a description of the dog for which the license is issued; and the number of the metal tag issued for the dog. See Haw. Rev. Stat. § 143-4 (1985).

Section 143-8, Hawaii Revised Statutes, requires each "officer"[1] to seize any unlicensed dog found running at large or found upon any public highway, street, alley, court, place, square, or grounds, or upon any unfenced lot, or not within a sufficient enclosure, and confine it in a pound or any suitable enclosure for a period of 48 hours, during which time the dog is subject to redemption by its owner by payment of the license fee due, plus the costs of impoundment. Additionally, section 143-10, Hawaii Revised Statutes, states that every person who takes into possession any stray dog shall immediately notify the animal control officer and release the dog to the animal control officer upon demand.

Section 143-15, Hawaii Revised Statutes, expressly permits any county to contract with any society or organization formed for the prevention of cruelty to animals for the seizure and impounding of all unlicensed dogs; for the maintenance of a shelter or pound for unlicensed dogs, and for lost, strayed, and homeless dogs; and for the destruction or other disposition of seized dogs not redeemed as provided in chapter 143, Hawaii Revised Statutes. Additionally, pursuant to the Revised Ordinances of Honolulu, the HHS now responds to all "animal nuisance" complaints by the public, not just those relating to dogs. See Rev. Ord. Hon. §§ 13-53.1 through 13-53.12 (1990). Under this ordinance, HHS employees may be deputized by the chief of police to issue summons and citations to alleged violators of chapter 13, article 53, Revised Ordinances of Honolulu.

By contract dated July 17, 1989, the City engaged the HHS to operate a dog pound, and to enforce leash, license, and barking regulations on the island of Oahu. A copy of the HHS' contract with the City is attached as Exhibit "A." Although applications for a dog license are filed with the City, and although the City processes and issues such licenses, the enforcement of regulations concerning unlicensed, unleashed or stray dogs is contracted to the HHS. Thus, HHS staff members are deputized by the Chief of Police to issue summonses to owners of barking, stray, or unlicensed dogs, and to seize such animals. See Rev.

[1]"Officer" is defined by Haw. Rev. Stat. § 143-1 (1985) as "any sheriff, deputy, any member of a police force in counties with a population of less than 100,000 and animal control officers of the several counties of the State."

Ord. Hon. chs. 3, 23 and 24 (1983). If contested, citations issued by HHS personnel are enforced by the Department of the Prosecuting Attorney.

Under its contract with the HHS, the City retains the right to inspect, at any time and without prior notice, the records of the HHS to determine whether the services being provided by the HHS are in compliance with the requirements of the contract. Additionally, under its contract with the City, the HHS is to provide "maintenance of the dog license files" and is given access to the City's dog license computer database.

A resident of the City who desires to obtain a license for the resident's dog must complete and submit to the Department of Finance a form entitled "Application for Animal Registration" (hereinafter "Application"), a copy of which is attached to this opinion as Exhibit "B." Information on the Application form includes the owner's name, home and business telephone numbers, address, and the name, breed, age, color, sex, and validation (license) number of the animal.

Upon registration of the animal, the information set forth on the Application is entered into the City's licensing computer database, and the City issues a metal dog tag to the owner. After processing, the completed Application forms are sent to the HHS. The HHS has on-line access to the City's database through a peripheral computer at its premises. Any corrections to the licensing information, such as change of ownership, change of owner's address, or change of animal name, are made by the HHS at the request of the animal owner.

Recently, HHS personnel seized a stray but licensed dog, which had damaged a property owner's fence. In order to seek compensation from the unknown owner of the dog, the property owner requested the HHS to disclose the name and address of the dog's owner. Based upon the past advice of the Department of the Corporation Counsel, the HHS did not give out any information contained in the Application. The property owner subsequently commenced a State District Court action against the HHS, in an effort to subpoena the HHS' records relating to the ownership of the subject dog.

The HHS requests an advisory opinion concerning whether, under the UIPA, the name and address of persons granted a dog license, as set forth in records it maintains, must be disclosed.

DISCUSSION

A. INTRODUCTION

The UIPA, the State's new open records law, applies only to the inspection and copying of "government records." Under the UIPA "[g]overnment record means information maintained by an agency in written, auditory, visual, electronic, or other physical form." Haw. Rev. Stat. § 92F-3 (Supp. 1989) (emphasis added). The term "agency" is defined by the UIPA as follows:

> `Agency' means any unit of government in this State, any county, or combination of counties; department; institution; board; commission; district; council; bureau; office; governing authority; other instrumentality of state or county government; or corporation or other establishment owned, operated, or managed by or on behalf of this State or any county, ...

Haw. Rev. Stat. § 92F-3 (Supp. 1989) (emphases added).

Although this definition of agency presents little difficulty when applied to such organizations as executive branch departments, boards, and commissions, its application becomes problematic when a UIPA request is directed either to a hybrid organization that bears only some characteristics of a state or local agency, or an entity that is not commonly perceived as a government agency. A threshold question that must be answered is whether the HHS is an "agency" for purposes of the UIPA. If so, we must then determine what, if any, information contained in the City's Application form is "public" under the UIPA.

B. WHETHER THE HHS IS AN "AGENCY"

The UIPA definitions set forth at section 92F-3, Hawaii Revised Statutes, were derived from section 1-104 of the Uniform Information Practices Code ("Model Code") drafted by the National

Conference of Commissioners on Uniform State Laws. With respect to the definition of "agency," the Model Code commentary[2] states:

> The principal purpose of this section is to define the entities of state and local government and the types of records to which this Code applies.
>
> The definition of the term "agency" in Section 1-105(2) is intended to be comprehensive. Consistent with much existing public record legislation, it includes all units of state and local government ranging from the largest to the one-person office. [Citation omitted.] It also includes any combination of political subdivisions of state or local government or other establishment operated on behalf of the state or any political subdivision. [Emphases added.]

Unfortunately, the Model Code's commentary does not provide any guidance in determining what constitutes a "corporation or other establishment . . . operated, or managed . . . on behalf of this State or any county," or an "instrumentality" of State or county government under this definition. Previous Office of Information Practices' ("OIP") advisory opinions have not had occasion to apply the UIPA's definition of "agency" to corporations or other establishments that are owned, operated, or managed by or on behalf of the State or the counties. In considering the application of the UIPA to quasi-governmental entities, considerable guidance may be gleaned from authorities applying the federal Freedom of Information Act's ("FOIA") definition of "agency" and from authorities applying the definition of "agency" under the open records laws of other states.[3]

1. The Meaning of "Agency" Under the FOIA

"Agency" under FOIA:

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[2]The UIPA's legislative history directs those interpreting its provisions to consult the Model Code's commentary, where appropriate to "guide the interpretation of similar provisions found in the [the UIPA]." See H. R. Stand. Comm. Rep. No. 342-88, 14th Leg., 1988 Reg. Sess., Haw. H.J. 969, 972 (1988).

[3]The UIPA's legislative history directs those interpreting its provisions to consult "the developing common law" and the FOIA in unanticipated cases. See S. Stand. Com. Rep. No. 2580, 14th Leg., Reg. Sess., Haw. S.J. 1093, 1094 (1988).

> [I]ncludes any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government . . . or any independent regulatory agency.

5 U.S.C. § 552(f) (Supp. 1989) (emphasis added). Under this definition, courts have given little consideration to the function an entity performs. Instead, the courts have focused on the degree of federal control over the entity, or the structural similarity of the entity to a typical agency. This concentration on structure and control excludes from agency status private organizations such as contractors, consulting firms, and grant recipients. See generally, 1 O'Reilly, Federal Information Disclosure § 5.02 at p.5-4 (1977).

In Rocap v. Indiek, 539 F.2d 174 (D.C. Cir. 1976), a citizen successfully asserted that the Federal Home Loan Mortgage Corporation (FHLMC) was a "government-controlled corporation" and, thus, a federal agency subject to the FOIA. The similarity between the FHLMC's structure and that of a federal agency strongly influenced the court's decision. The United States Court of Appeals for the District of Columbia considered both the FHLMC's federal charter and its presidentially appointed board as indicia of government control. The court concluded that these indicia of control outweighed organizational aspects of the FHLMC that indicated a lack of federal control. For example, the court did not consider the FHLMC's nongovernmental funding sources sufficient to overcome the evidence establishing governmental control. Similarly, the Rocap court rejected a contention that an agency's employees must be subject to Civil Service Commission jurisdiction before the FOIA agency definition will apply. As a result of the government's control of the structure and operations of the FHLMC, the Rocap court concluded that the entity met the definition of a "Government controlled corporation" and, therefore, constituted an agency under the FOIA.

To determine whether an entity is an agency under the FOIA, the U.S. Supreme Court apparently would require a greater degree of federal control over an entity's day-to-day operations than did the Rocap court. In Forsham v. Harris, 445 U.S. 169, 100 S. Ct. 978, 63 L. Ed. 2d 293 (1980), the Court held that a group

which was the recipient of federal grant money was not an "agency" for purposes of the FOIA. In reaching this decision, the court reasoned:

> Before characterizing an entity as "federal" for some purpose, this Court has required a threshold showing of substantial federal supervision of the private activities, and not just the exercise of regulatory authority necessary to assure compliance with the goals of the federal grant . . . [t]he funding and supervision indicated by the facts of this case are consistent with the usual grantor-grantee relationship and do not suggest the requisite magnitude of Government control.

Forsham, 445 U.S. at 180, n.11.

Similarly, in Irwin Memorial, Etc. v. American National Red Cross, 640 F.2d 1051 (9th Cir. 1981), the court held that the Red Cross was not an "agency" for purposes of FOIA, over the appellant's assertion that the Red Cross was a "Government controlled corporation" under 5 U.S.C. § 552(f). Although the court noted that the legislative history of 1974 amendments to the FOIA evidenced an intention that government corporations, government controlled corporations, or other establishments within the executive branch be subject to FOIA's coverage, it nevertheless concluded that the Red Cross was not an "agency," reasoning:

> [R]egardless of its label, be it a department, corporation, office, etc., a threshold showing of substantial federal control or supervision is required before an entity can be characterized as "federal" for some purpose. [Citations omitted.] It is the existence of this element of substantial federal control that distinguishes those entities that can be fairly denominated as federal agencies under the FOIA from the organizations whose activities may be described as merely quasi-public or quasi-governmental. It must be recognized that the requisite degree of federal control, however, is manifested in various forms and usually consists of a confluence of several "federal" characteristics.

Irwin Memorial, 640 F.2d at 1054-55.

Federal courts construing the FOIA definition of "agency" have held that a determination of whether an entity is an "agency" under the FOIA must be made on a case-by-case basis as "an unavoidable consequence resulting from `the myriad organizational arrangements' adopted `for getting the business of government done.'" Irwin Memorial, 640 F.2d at 1054. As the court in Washington Research Project, Inc. v. Department of Health, Education & Welfare, 504 F.2d 238, 245-46 (D.C. Cir. 1974) stated, "each new arrangement must be examined anew and in its own context."

However, reliance solely upon federal case law interpreting the FOIA definition of the term "agency" would be ill advised. This is because on its face, the UIPA's definition of agency is more comprehensive than that of the FOIA, since it applies to "corporation[s] or other establishment[s] owned, operated or managed on behalf of this State or any county," not just to "government controlled corporation[s]." Therefore, we now turn to an examination of the open records laws of other states, for guidance in resolving the issue presented.

2. The Meaning of "Agency" Under Other State Statutes

There is a wide diversity in the scope of the open records laws of other states, such that the governmental units or quasi-governmental entities to which they apply vary from one jurisdiction to another. In some jurisdictions, such as in Michigan and West Virginia, the source of the entity's funding may be a determinative factor. Section 15.232(b)(iv), Michigan Compiled Laws, provides that "[a]ny . . . body which is created by state or local authority or which is primarily funded through state or local authority" is a "public body" for purposes of the Michigan Freedom of Information Act. Thus, in Kubick v. Child and Family Services, 429 N.W.2d 881 (Mich. App. 1988), the court held that a nonprofit foster care corporation which received less than 50 percent of its funding from the government was not a "public body."

Similarly, section 29B, West Virginia Code, provides that a "public body" includes "any other body which is created by state or local authority or which is primarily funded by the state or local authority." Thus, in 4-H Road Community Association v.

West Virginia University Foundation, Inc., 388 S.E.2d 308 (W.Va. 1989), the court held that a nonprofit corporation formed by private citizens for the purpose of assisting the university through fund raising, was not a "public body" because its funding was provided by donations from the public.

Like the UIPA, Maryland's open records law applies to an "instrumentality" of the state. In A.D. Abell Publishing Co. v. Mezzanote, 464 A.2d 1068 (Md. 1983), the Maryland Court of Appeals considered whether a mortgage guarantee association established by the Maryland General Assembly, which paid claimants of insolvent insurers, was an "instrumentality of the State" for purposes of Maryland's Public Information Act. The Mezzanote court noted that the phrase "instrumentality of the State," "must be liberally construed in favor of inclusion in order to effectuate the . . . Act's broad remedial purpose." Mezzanote, 464 A.2d at 1071. Further, the court observed that:

> [T]here is no single test for determining whether a[n] . . . entity is an agency or instrumentality of the State for a particular purpose. All aspects of the interrelationship between the State and the . . . entity must be examined in order to determine its status.
>
> . . . [T]his Court has previously rejected the contention that the sole test to be applied in characterizing a[n] . . . entity as an agency or instrumentality of a government is whether the entity is subject to its complete control.

Mezzanote, 464 A.2d at 1072. In concluding that the mortgage guarantee association was an instrumentality of state government, the court noted that it was established by legislative act, had a public purpose, and that it was effectively controlled by the state because members of its board of directors were appointed by the insurance commissioner. Id. at 1074.

In Board of Trustees v. Freedom of Information Commissioner, 436 A.2d 266 (Conn. 1980), the Connecticut Supreme Court was called upon to decide whether a hybrid public-private educational academy was a "public agency"[4] for purposes of the Connecticut

[4]The Connecticut statute under consideration by the court defined public agency as:

Freedom of Information Act. The statutory definition of "public agency" before the court failed to address whether a nominally private corporation which serves a public function may be considered a "public agency" for purposes of Connecticut's open records law. Relying upon case law interpreting the federal FOIA, the court concluded that the academy's status as a private nonstock corporation was not a determinative factor. Instead, the court held that the following factors should be considered in deciding whether an entity is a "public agency":

> (1) whether the entity performs a governmental function; (2) the level of governmental funding; (3) the extent of governmental involvement or regulation; and (4) whether the entity was created by the government.

Board of Trustees, 436 A.2d at 270-71.

Additionally, the court held that the above factors must be applied on a case-by-case basis "to ensure that the general rule of disclosure underlying the state's FOIA is not undermined by nominal appellations which obscure functional realities." Id. at 271. Because the educational academy was almost entirely publicly funded, had its operations examined and certified by the state, was created by statute to provide a public education, and engaged in a basic governmental function, the court concluded it was a "public agency" under Connecticut's FOIA.

A review of Florida court decisions applying the Florida Public Records Act's definition of "agency" is also appropriate, given the substantial similarity between the UIPA definition of "agency" and that set forth in the Florida statute. Florida's Public Records Act defines "agency" as follows:

> [A]ny executive, administrative or legislative office of the state . . . and any state or town agency, any department, institution, bureau, board, commission or official of the state or of any city, town, borough, municipal corporation, school district or other political subdivision of the state, and also includes any judicial office, official or body but only in respect to its or their administrative functions.
>
> Conn. Gen. Stat. § 1-18a(a) (1975).

> [A]ny state, county, district, authority, or municipal officer, department, or other separate unit of government created or established by law and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

Fla. Stat. § 119.011(2) (1987) (emphasis added).

Several Florida court decisions have helped clarify the scope of the above definition of "agency." In Parsons & Whitmore, Inc. v. Metropolitan Dade County, 429 So. 2d 343 (Fla. Dist. Ct. App. 1983), the court concluded that two corporations which had contracted with the county to construct, manage, and operate a waste treatment facility were not "agencies" under the Florida Public Records Act. The court noted that a corporation does not act "on behalf of" a public agency merely by contracting with a governmental agency. Parsons, 429 So. 2d at 346. Rather, the court's analysis focused on whether the corporation essentially performed a governmental function.

In Byron, Harless, Etc. v. State of Florida, 360 So. 2d 83 (Fla. Dist. Ct. App. 1978), the court held that a consulting firm, which had been hired to conduct a search for potential applicants for the position of managing director of a public electrical authority, was "acting on behalf of" a public agency. In Byron, the court stated:

> A business entity such as the consultant must be regarded as "acting on behalf of" the public agency if the services contracted for are an integral part of the agency's chosen process for a decision on the question at hand. [Citation omitted.] Because the consultant was employed to perform and did perform a preliminary search and inquiry function which [the public agency] thought necessary or desirable for its proper decision, the consultant was "acting on behalf of" [the public agency] to which the public records law applied.

Byron, 360 So. 2d at 88.

Most recently, in Fox v. News-Press Publishing Co., Inc., 545 So. 2d 941 (Fla. Dist. Ct. App. 1989), a Florida appeals

court considered whether a private corporation, which had contracted with a city to tow abandoned or wrecked vehicles from public streets, was an "agency" for purposes of the Florida Public Records Act.

The Fox court held, based upon a "totality of factors," that the private corporation was an "agency" under the Florida Public Records Act. Among other things, under its contract with the city, the towing company was required to tow vehicles from public streets, charge for services at rates set by the city, maintain public liability insurance naming the city as an additional insured, operate at specified hours, allow the city to inspect all of its property and records, and prepare and maintain certain forms and records. In holding that the private towing company was an "agency," the Fox court reasoned:

> By virtue of these obligations set forth in the towing contract, [the towing company], as the assignee under the contract, was clearly performing what is essentially a governmental function, i.e., the removal of wrecked and abandoned automobiles from public streets and property. This governmental duty was engendered by the various statutes directing law enforcement officers to remove abandoned or wrecked vehicles or other personal property from public streets and property.

Fox, 545 So. 2d at 943 (emphasis added).

The facts before the court in Fox are remarkably similar to the facts presented here. First, under its contract with the City, the HHS agreed to provide patrol services on the island of Oahu; operate a dispatch office and respond to calls, 24 hours a day, seven days a week; maintain dog license files; remit to the City all fees and charges received in rendering dog pound services; permit the inspection of its personnel, property, and records at any time and without notice; and obtain liability insurance naming the City as an additional insured. Additionally, under its contract with the City, the HHS submits an operating budget to the City like any other executive branch department.

Furthermore, section 143-8, Hawaii Revised Statutes, provides that "[e]xcept where licensing requirements are

dispensed with, every officer shall seize any unlicensed dog found running at large or found upon any public highway or street . . . and confine it in a dog pound or any suitable enclosure for a period of forty-eight hours, during which time it shall be subject to redemption by its owner by payment of the license due, if any, and a penalty to be set by each county council." The "officer" referred to in section 143-8, Hawaii Revised Statutes, means "any sheriff, deputy, any member of a police force . . . and animal control officers of the several counties." Haw. Rev. Stat. § 143-1 (1987). As with the organization in the Fox case, the HHS performs a governmental function. Although determining what is a "governmental function" may at times be difficult, we cannot conceive of a function more typically reserved to government than the enforcement of the laws, something traditionally reserved to the executive branches of State and county government.

Moreover, while we believe that an entity's source of funding is not a determinative factor, according to the HHS, it is estimated that between 60 and 65 percent of the HHS' funding for the fiscal year 1991 will be from funds received from the City. This fact also militates in favor of a conclusion that the HHS is an "agency" for purposes of the services performed for the City.

We agree with other federal and state authorities and, therefore, conclude that a determination whether an entity is an "agency" for purposes of the UIPA must be made on a case-by-case basis, based on the totality of circumstances. Each new arrangement must be separately considered in its own context given the myriad of organizational arrangements for getting the business of the government done. Further, it is clear that an entity is not "operated on behalf of" the State or any county and, therefore, an agency under the UIPA, merely by contracting with a governmental agency. In addition, we decline to follow the decisions of federal courts applying FOIA's definition of agency that require virtual day-to-day supervision and control over an entity's activities before an entity is considered an "agency." On its face, the definition of "agency" set forth at section 92F-3, Hawaii Revised Statutes, is far more expansive than that set forth by the FOIA. A restrictive construction of the UIPA definition of "agency" would be contrary to the Act's legislative history, which as set forth above, indicates that the term was intended to be comprehensive. However, at a minimum,

under the UIPA, we believe that an entity must perform what may reasonably be considered a governmental function before it may be included within the coverage of the Act.

With the foregoing principles in mind, an examination of the totality of circumstances surrounding the HHS' operations reveals the following:

1. The HHS' operations are primarily subsidized by public funds and through a budgetary process followed by other City executive branch departments;

2. The HHS performs a traditionally governmental function by its enforcement of State and county laws enacted for the health, safety, and welfare of the public. Significant portions of the HHS' operations involve law enforcement;

3. The HHS maintains the City's dog license records, and its own records, personnel, and property may be inspected by the City at any time, and without prior notice; and

4. All fees and charges collected by the HHS in the performance of its duties are remitted to the City.

Based upon these factors, we conclude that for the activities within the scope of the HHS' contract with the City and the enforcement of leash, license, and other animal control regulations, it is an "agency" for purposes of the UIPA, since it is a "corporation or other establishment . . . operated, or managed . . . on behalf of" the City. However, the HHS engages in many activities which are outside the scope of its agreement with the City, such as fund-raising, placing pets for adoption, and providing advice on animal care. We merely conclude that as to activities within the scope of its agreement with the City, or to the extent that it enforces state statutes and city ordinances relating to dogs and animal nuisances, it is an "agency" under the UIPA. See Fritz v. Norflor, 386 So. 2d 899 (Fla. Dist. Ct. App. 1980).

We do not mean to suggest by this opinion letter that the HHS is an agency under other State laws, including but not limited to chapter 91, Hawaii Revised Statutes. Additionally, we again caution that a determination of whether an entity is an agency for purposes of the UIPA must be made on a case-by-case basis.

We now turn to an examination of what, if any, information set forth on the City's Application which is maintained by the HHS, is subject to public inspection and copying under the UIPA.

C. PUBLIC ACCESS TO DOG LICENSE REGISTRATION INFORMATION

Under the UIPA, "[a]ll government records are open to public inspection unless access is restricted or closed by law." Haw. Rev. Stat. § 92F-11(a) (Supp. 1989). In addition to this general rule of agency disclosure, in section 92F-12, Hawaii Revised Statutes, the Legislature set forth a list of government records, or categories of records, which must be available for public inspection "[a]ny provision to the contrary notwithstanding." The legislative history of section 92F-12, Hawaii Revised Statutes, states that as to the records described in this section, the UIPA's "exceptions such as for personal privacy and for frustration of legitimate government purpose are inapplicable. . . . This list merely addresses some particular cases by unambiguously requiring disclosure." S. Conf. Comm. Rep. No. 235, 14th Leg., 1988 Reg. Sess., Haw. S.J. 689, 690 (1988); H.R. Conf. Comm. Rep. No. 112-88, 14th Leg., 1988 Reg. Sess., Haw. H.J. 817, 818 (1988).

As to government records which concern government licenses and permits, section 92F-12, Hawaii Revised Statutes, provides in pertinent part:

> **§92F-12 Disclosure required.** (a) Any provision to the contrary notwithstanding each agency shall make available for public inspection and duplication during regular business hours:
>
> . . . .
>
> (13) Rosters of persons holding licenses or permits granted by an agency which may include name, business address, type of

> license held, and status of the license;
> . . . .

Haw. Rev. Stat. § 92F-12(a)(13) (Supp. 1989).

Neither the City nor the HHS maintains a "roster" of information concerning those granted a dog license. This necessarily leads us to an examination of section 92F-11(c), Hawaii Revised Statutes, which states, "[u]nless the information is readily retrievable in the form in which it is requested, an agency shall not be required to prepare a compilation or summary of its records." Section 2-102(b) of the Model Code is identical to section 92F-11(c), Hawaii Revised Statutes. The Model Code commentary sheds significant light upon this UIPA provision:

> Subsection (b) . . . makes plain that the agency's duty is to provide access to existing records; the agency is not obligated to create "new" records for the convenience of the requester. [Citations omitted.] To illustrate: a request is made for the age, sex, race and evidence of alcohol consumption of all individuals involved in traffic accidents within the past five years. Information pertaining to all accident reports is maintained in the files of a particular agency. The policy question is whether the agency must expend the time, money, and effort to locate and supply the requested information. Subsection (e), discussed infra, does not permit the agency to charge for record searches or review of documents. Thus, under subsection (b) the agency may deny the request to compile if such a compilation does not already exist.
>
> As a general rule, subsection (b) should be invoked selectivity because the requester has the option of having the full record system duplicated. [Citation omitted.] If that option is taken, the agency under Section 2-103 would have the burden of screening all records for non-disclosable material. The costs of duplication, while imposing, might not be great enough to discourage the requester. Thus, an agency might find it easier to produce the compilation than to screen the records from which the compilation would have to be derived.

> The policy of subsection (b) is most important to agencies with manual record systems. In computerized records systems, however, agency retrieval capabilities are significantly greater. The request in the earlier example would have to be granted if the data could be routinely compiled, given the existing programming capabilities of the agency. [Emphasis added.]

The foregoing Model Code commentary clarifies that when an agency does not maintain a "roster," section 92F-11(c), Hawaii Revised Statutes, does not relieve an agency from making the underlying records available for inspection. The commentary persuasively suggests that where searching, reviewing, and segregating the underlying records would impose significant time demands upon an agency, an agency voluntarily prepare a compilation or summary of its records. Additionally, the Model Code commentary suggests that in the case of computerized records systems, provided that the information is readily retrievable, an agency must provide the requested summary or compilation of its records.

In applying the above principles to the HHS, even though it does not maintain a "roster" of persons granted dog licenses, if given the HHS' programming capabilities, such a roster would be readily retrievable, it would be required to prepare a compilation of its records. Even assuming that such information was not readily retrievable from its database, the underlying records, after segregation of protected data, must be made available for public inspection. However, an agency must only provide "reasonably segregable" information from its records if portions of those records are protected from disclosure. We now return to an examination of what information contained upon the Application is "public" under section 92F-12(a)(13), Hawaii Revised Statutes, and must be disclosed by the HHS upon request.

Under section 143-4, Hawaii Revised Statutes, a dog license is issued to the person who owns the dog. Thus, under the UIPA, a dog owner's name and business address, if any, is clearly "public." However, the City's Application form contains other information that may be outside the scope of section 92F-12(a)(13), Hawaii Revised Statutes. For example, the Application contains the owner's address, home and business telephone

numbers, dog's name, breed, age, sex and license number. While the information listed in section 92F-12(a)(13), Hawaii Revised Statutes, does not appear to be an exhaustive list of information that may be placed on a "roster" by an agency, we do not believe that a licensee's home address and home telephone number may be permissibly disclosed under this section. Thus, we must determine whether other information contained upon the Application is protected from disclosure under a UIPA exception to access. If not, the information must be disclosed by the HHS, or the City. See Haw. Rev. Stat. § 92F-11(a) and (b) (Supp. 1989).

Section 92F-13(1), Hawaii Revised Statutes, provides that an agency is not required by the UIPA to disclose "[g]overnment records which, if disclosed, would constitute a clearly unwarranted invasion of personal privacy." In previous OIP advisory opinions, we concluded that an individual has a significant privacy interest[5] in information such as the individual's residential address and telephone number, and that generally, the disclosure of this information would constitute a clearly unwarranted invasion of personal privacy, because the public interest in disclosure of this information does not outweigh an individual's privacy interest in the information. See OIP Op. Ltr. Nos. 90-4 (Nov. 9, 1989) (home address) and 89-16 (Dec. 27, 1989) (home address and home telephone number). We can find no reason to depart from our previous opinions based on the facts present here. Accordingly, we conclude that the disclosure of the home address and home telephone number of a person issued a dog license, would constitute a clearly unwarranted invasion of personal privacy under section 92F-13(1), Hawaii Revised Statutes. Therefore, this information should not be disclosed by the HHS or the City.[6]

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[5]The legislative history of the UIPA's privacy exception indicates that it only protects from disclosure information in which an individual has a significant privacy interest. See S. Conf. Comm. Rep. No. 235, 14th Leg., 1988 Reg. Sess., Haw. S.J. 689, 690 (1988); H.R. Conf. Comm. Rep. No. 112-88, 14th Leg., 1988 Reg. Sess., Haw. H.J. 817, 818 (1988) ("[o]nce a significant privacy interest is found, the privacy interest will be balanced against the public interest in disclosure").

[6]There may be circumstances affecting the health and safety of an individual under which the City or the HHS would be required to disclose this "confidential information." Section 92F-12(a)(3), Hawaii Revised Statutes, requires agencies to disclose information "pursuant to a showing of compelling circumstances affecting the health or safety of any individual."

As to such information on the Application as the dog's name, sex, age, breed, color, license number, and the licensee's business telephone number, in our opinion, an individual licensed to own a dog does not have a significant privacy interest in such information, such that section 92F-13(1), Hawaii Revised Statutes would protect such information from disclosure.[7] Further, in our opinion, no other exception to public access contained in section 92F-13, Hawaii Revised Statutes, applies to this information.

Accordingly, we conclude that with the exception of the address and home telephone number of individuals granted a dog license, the remainder of the information set forth on the Application attached to this opinion as Exhibit "B," must be disclosed by the HHS under the UIPA.

CONCLUSION

Based upon the totality of circumstances surrounding the HHS' operations, we conclude that it is a "corporation or other establishment . . . operated . . . by or on behalf of this State or any county." Haw. Rev. Stat. § 92F-3 (Supp. 1989). Therefore, for the activities within the scope of its agreement with the City, or relating to its enforcement of laws enacted by the State or the county, it is an "agency" subject to the UIPA.

Except for the home address and home telephone number of individuals granted a dog license, the remainder of the information contained upon the City's Application for Animal Registration must be available for public inspection and copying under the UIPA. Although the disclosure of an individual's home address and telephone number would constitute a clearly

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[7]Although section 92F-14(b)(7), Hawaii Revised Statutes, provides that an individual has a significant privacy interest in "information compiled as part of an inquiry into [their] fitness to be granted or retain a license" we do not believe that the information set forth on the Application is so compiled by the City. Although the breadth of this UIPA provision is unclear, we do not believe that the information set forth on the Application is compiled as part of an inquiry into an individual's "fitness" to be granted a dog license. Indeed, there are no minimum competency or other requirements that must be met by a dog owner, other than ownership and payment of the required fee, before the City must grant the license. See Haw. Rev. Stat. § 143-4 (1985)("[u]pon receipt of the license fee the director . . . shall issue to the person paying the fee a license"). Further, most of the information on the Application relates to the dog, not the person issued the license.

unwarranted invasion of personal privacy, access to the remainder of the information upon the Application is not "restricted or closed by law."

Very truly yours,

Hugh R. Jones
Staff Attorney

HRJ:sc
Attachments
cc: Honorable Ronald Mun
Corporation Counsel
City and County of Honolulu

APPROVED:

Kathleen A. Callaghan
Director